IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc 11072-M of 2007

Date of decision: 9.7.2007

Gurmeet Singh …Petitioner

Versus

State of Punjab and anr …Respondents

Present: Mr HBS Baidwan, Advocate for the petitioner.
Mr IPS Sidhu, Sr DAG Punjab.
Mr HNS Gill, Advocate for respondent-2.

S.S. SARON, J.

Heard counsel for the parties.

Darshan Kaur (respondent-2) has filed a private complaint (Annexure P1) which is pending against the petitioner and one Amar Singh in the Court of Ilaqa Magistrate, Mohali. The said complaint has been filed in respect of the offences under Sections 3 and 6 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act – for short) and Sections 506, 148 and 149 IPC. It is alleged by the complainant that she is a member of the Scheduled Castes and at present Sarpanch of Gram Panchayat Village Shampur. One Jarnail Kaur also contested for the office of Sarpanch and the accused were the supporters of Jarnail Kaur. Said Jarnail Kaur had filed an election petition against the complainant. On 3.12.2004 at about 7 p.m., the complainant was coming from Gugga Pir Marri after paying her obeisance. When she reached near the Gurudwara Sahib, the accused came there and uttered the offending language and hurled filthy abuses. The incident is stated to have been witnessed by

Gurdial Gir, Mamraj Gir and Rikhi Ram. A complaint was made to the SHO Police Station Sohana on 3.12.2004 followed by an application to the Deputy Commissioner, Roopnagar on 30.12.2004. However, the Police have not taken any action. On the basis of the private complaint (Annexure P1), the petitioner and Amar Singh were summoned. The petitioner and Amar Singh filed an application for grant of pre-arrest bail. The learned Special Judge, Roopnagar vide order dated 13.12.2006 allowed the bail application of Amar Singh (non-petitioner) on the ground that he was also a member of the Scheduled Castes. It was observed that the offence under the Act cannot be attracted against the members of the Scheduled Castes and this fact had been accepted by the counsel for the complainant as well. However, the application of the petitioner has been dismissed.

The petitioner, therefore, has approached this Court seeking pre-arrest bail. Learned counsel for the petitioner has submitted that on the complaint filed by Darshan Kaur (respondent-2) before the Police, an inquiry was held and during the inquiry all the residents of the village who had assembled categorically stated that neither the petitioner nor Amar Singh had uttered the offending words as attributed to them. The Police after conducting a thorough inquiry forwarded its report to the higher authorities which was to the effect that no such incident took place and the complaint had been filed due to enmity between Mukhtiar Singh - the father-in-law of the complainant Darshan Kaur (respondent-2) and the petitioner. The petitioner had submitted an application that the date of birth of Mukhtiar Singh was 23.6.1938 and he had superannuated his legal age in service. The petitioner had also supplied the proof of date of birth of said Mukhtiar Singh and also filed an affidavit. Accordingly, Mukhtiar Singh was ordered to be retired from service. On account of the said enmity,

Darshan Kaur complainant had filed a false complaint. The Police while forwarding its report recorded the fact that no case was made out. In fact, in view of the complaint made by the petitioner regarding the date of birth of Mukhtiar Singh, FIR 60 dated 15.3.2005(Annexure P5) was registered against him for the offences under Sections 420, 464, 461, 465, 471 and 120-B IPC. The present case, therefore, it is submitted is a false case and has been got initiated in view of the aforesaid enmity.

Learned counsel for the complainant (respondent-2) has submitted that the allegations in the FIR are duly made out against the petitioner. The petitioner is not entitled to the concession of pre-arrest bail on account of the serious allegations and offending words that he had uttered.

I have given my thoughtful consideration to the matter.

It may appropriately be noticed that the petitioner has been summoned as an accused in a complaint case where his custody is not required for the purposes of investigation. The allegations against him are that he uttered certain offending words along with one Amar Singh (non-petitioner) while the complainant was returning from Gugga Pir Marri after paying her obeisance. Section 3(1)(x) of the Act envisages that whoever not being a member of the Scheduled Castes or a Scheduled Tribes intentionally insults or intimidates with the intent to humiliate a member of the Scheduled Castes or Scheduled Tribes in any place within the public view shall be liable for punishment for a term which shall not be less than 6 months but which may extend to 5 years and with fine. It has not been shown by the complainant as to whether the place i.e. while returning from Gugga Pir Marri after paying her obeisance when she had reached near the Gurudwara in front of the Pulli (a bridge on the canal minor) and when the accused

came and made offending words was within the public view so as to fall within the meaning of Section 3(1)(x) of the Act. This aspect, however, is to be considered and gone into during trial. In any case, it has not been disputed by the learned counsel for respondent-2 that the petitioner was found innocent in the Police inquiry that was conducted. It has been shown by the petitioner that there has been enmity between the petitioner and the father-in-law of the complainant inasmuch as the petitioner had made a complaint regarding the date of birth of Mukhtiar Singh, the father-in-law of the petitioner. On the basis of the said complaint, case FIR 60 dated 15.3.2005 (Annexure P5) stands registered against said Mukhtiar Singh. The Birth Certificate (Annexure P3) showing the date of birth of Mukhtiar Singh as 23.6.1938 has been placed on record. This Court in ***Phulla Dass v. State of Punjab*** 1998 Criminal Law Journal, 157 held that the provisions of Section 18 of the Act places specific embargo on the powers of the Court to grant anticipatory bail and Section 438 CrPC is thereby not available to persons committing offences under the Act. However, it was also held that in case of misuse of the process of law or filing of totally malafide or vexatious complaint, the Court can grant anticipatory bail by exercising inherent powers under the CrPC or powers under Article 226 of the Constitution. In ***M/s Pepsi Foods Limited v. Special Judicial Magistrate*** AIR 1998 SC 128, it was held that the nomenclature under which a petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case, the Court finds that an accused could not invoke its jurisdiction under Article 226 of the Constitution, the Court can certainly treat the petition as one under Article 227 or Section 482 CrPC. It was also observed that

summoning of an accused in a criminal case is a serious matter and the criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion.

In the facts and circumstances of the present case, the Police has found the complaint of the complainant Darshan Kaur (respondent-2) to be not made out and thereafter the criminal law has been set into motion by examining witnesses. There is enmity between the parties. Therefore, merely because the summoning order has been passed, it cannot at this stage be said that the petitioner has committed the offence. The same is to be established after the evidence has been led. Besides, it is to be kept in view that being a complaint case the custody of the petitioner is not required for the purposes of investigation by the Police. The summoning order has been passed and issued for securing the presence of the petitioner in Court. He is not liable to be imprisoned before his guilt is established. Moreover, the co-accused of the petitioner namely Amar Singh has been granted pre-arrest bail vide order dated 13.9.2006 (Annexure P2).

For the fore going reasons, the petition is allowed and in the event of arrest, the petitioner shall be admitted to bail during the pendency of the complaint subject to his furnishing personal bond and surety to the satisfaction of the learned trial Court. He shall appear in the case before the trial Court and furnish the necessary bonds. However, nothing stated herein shall be construed as an expression of opinion on the merits of the case and the learned trial Court shall consider the case on the basis of evidence and material as produced before it.

9.7.2007. (S.S.SARON)
ASR JUDGE